



GERALD C. MANN

~~J. C. MANN~~
ATTORNEY GENERAL

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

Honorable Frank R. Murray
County Attorney
Carson County
Panhandle, Texas

Dear Sir:

Opinion No. O-3501

Re: Whether attorney holding delinquent
tax contract with county is entitled
to percentage of common school dis-
trict taxes collected by him.

In your letter of May 1, 1941, you advised that on September 23, 1940 the commissioners' court of Carson County entered into a contract with E. H. Smith, an attorney, for the collection of delinquent taxes, agreeing to pay him a percentage of the taxes collected by him. Said contract was on the form adopted by the office of the State Comptroller, and was approved by the Comptroller and the Attorney General on October 2, 1940. You request our opinion as to whether or not the attorney's fee may be paid out of the State and county collections and none of the same assessed against the common school districts located in the county.

Under the contract in question, Mr. Smith was employed to aid and assist in the collection of "all delinquent State and county ad valorem taxes, penalty and interest (except taxes of independent school districts and incorporated cities and towns) due any and all political subdivisions or defined districts of said county and State which the county tax collector receives and receipts for under the provisions of Articles 7254 and 7257, Revised Statutes, 1925, and shown to be delinquent upon the delinquent tax records of said county from 1919 to the date of the termination of the contract," and further provided that he should be paid a compensation of 15% of the amount collected of all delinquent taxes, penalty and interest. A reading of said Articles 7254 and 7257 discloses that delinquent common school district taxes were included in the contract. Hence, the only question actually presented is whether the commissioners' court had the power or authority to enter into such a contract with an attorney for the collection of the delinquent common school district taxes, agreeing to pay him such a percentage of the taxes collected in behalf of such school districts.

Article 7335, Revised Civil Statutes, and Article 7335a, Vernon's Annotated Civil Statutes, provide authority for commissioners' courts in certain instances to make such contracts with attorneys for the collection

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of delinquent State and county taxes for a percent of the taxes, penalty and interest actually collected not exceeding 15%. Neither of those statutes specifically names common school district taxes. However, Article 2784, Revised Civil Statutes, gives the commissioners' courts the power to levy and cause to be collected the taxes of common school districts. If said Articles 7335 and 7335a do not confer authority upon commissioners' courts to make such contracts with respect to delinquent common school district taxes, in our opinion they do obtain such power from said Article 2784 by necessary implication. See Roper v. Hall, 280 S.W. 289. No more than 15% of the taxes, penalty and interest collected for the State and county may be charged against them as compensation for the attorney. However, he is entitled to a like percentage of the collections made for the common school districts under the contract, payable out of such school collections.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Glenn R. Lewis

Glenn R. Lewis
Assistant

APPROVED MAY 14, 1941
/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
Opinion Committee
By P.W.
Chairman